HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 787 of 2007

Between:

Smt. Chittaramma & others

… Appellants

And

The Joint Collector-II,
Ranga Reddy District,
Hyderabad & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri A. Ravinder Reddy

September 28, 2007

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 18.8.2006 passed by the learned Single Judge in Writ Petition No.16653 of 2006 whereby he refused to interfere with order dated 7.2.2006 passed by Joint Collector-II, Ranga Reddy District (for short, 'the Joint Collector') under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the 1955 Act').

A perusal of the record shows that lands comprised in Survey Nos.403 (Ac.2-12 gts.) and 404 (Ac.1-03 gts.), total measuring Ac.3-15 gts. (hereinafter described as, 'the subject lands') situated at Alwal Village, Malkajgiri Mandal, Ranga Reddy District stood in the name

of one Khaja Jalal. After coming into force of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the competent authority vide its order dated 31.5.1975, while computing the lands of Shri Khaja Jalal, issued ownership certificate under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 in favour of one Smt.Yellamma W/o.late Chittari in respect of the subject lands on the ground that her ancestor was recorded as protected tenant. Respondent No.2 herein challenged that order by filing an appeal, which was dismissed by District Revenue Officer, Hyderabad on 15.1.1977. He then preferred C.R.P.No.413 of 1977. The same was allowed by this Court and the matter was remanded to the Land Reforms Tribunal for fresh consideration. In turn, the Land Reforms Tribunal, after holding enquiry, directed respondent No.2 to approach the Inams Tribunal for grant of Occupancy Rights Certificate (ORC) under the 1955 Act because the subject lands were classified as Inam Lands vide reference No.G/2887/82 dated 4.12.1993.

In furtherance of the order passed by the Land Reforms Tribunal, respondent No.2 filed an application on 11.3.1997 before the Inams Tribunal-cum-Revenue Divisional Officer, Chevella Division, Ranga Reddy District (for short, 'the Inams Tribunal') for grant of ORC. The same was rejected on the ground that the provisions of the 1955 Act are not applicable to the subject lands because the same had already been converted into non-agricultural lands by construction of houses. Respondent No.2 challenged the order of the Inams Tribunal by filing an appeal under Section 24 of the 1955 Act, which was allowed by the Joint Collector vide his order dated 18.3.2002 by recording the following observations:

"As regards Sy.Nos.403 & 404, the Revenue Divisional Officer has issued a Memo No.L/4996/97 stating that the land bearing Sy.No.403 & 404 are covered by dwellings and plots and converted into non-agricultural and deserves no consideration granting of occupancy rights certificate. It is seen from the copies of phanies available that the land bearing Sy.Nos.403 & 404 are classified as patta in the pahanies for the years 1966-67, 1968-

69, 1971-72, 1972-73, 1973-74, 1984-85 and 1989-90. Therefore, it is not clear as to whether the lands bearing Sy.Nos.403 & 404 are either patta or Inam lands and the Revenue Divisional Officer, in his order has not clearly mentioned as when the said lands were converted into non-agricultural, i.e. either prior to the date of vesting into Government, or i.e. 20-7-1955 or prior to the date of vesting for grant of occupancy rights certificate i.e. 01.11.1973. Therefore, it would be expedient to direct the Revenue Divisional Officer to conduct an exhaustive enquiry as to whether the land bearing Sy.Nos.403, 404 & 405 are patta or Inam and when they were converted into non-agricultural lands and also if converted into non-agricultural lands, whether the procedure contemplated under provisions of the relevant acts were followed. All these issues need a comprehensive enquiry.

For the aforesaid reasons, the appeal is allowed and the matter is remitted back to the Revenue Divisional Officer, Chevella Division for conducting denova enquiry after issue of notices to all concerned. the matter shall be disposed of as expeditiously as possible. Accordingly, the appeal is disposed of."

On their part, the appellants challenged order dated 4.12.1993 passed by the then Tenancy Tribunal in Case No.G/2887/82 whereby they were directed to approach the Inams Tribunal for grant of ORC. The Joint Collector allowed their appeal as well and directed de novo enquiry. Thereafter, the Inams Tribunal passed order dated 19.10.2002 for grant of ORCs to the appellants and respondent No.2 by declaring that the subject lands are only agricultural lands. The operative part of that order reads as under:

"However, since there is a special provision created u/s.7 A.P. (T.A.) Abolition of Inam Act, 1955, it is hereby ordered to grant Occupancy Rights Certificate in the following manner:

Sl.No.	**Name of the Village**	**Sy.No.**	**Extent**	**Name (s) of the person (s) who is to be registered as an occupant**

1.	Alwal	403 404	1-38 0-02 2-00	:Sri Bingi Mallaiah : U/s.8 :Sri Late Narsimlu :
2.	Alwal	403 404	0-14 1-01 1-15	:1. Smt.B. Chittaramma: U/s.7 W/o.Late Rajaiah : 2. Smt.B. Mahankalamma W/o.Pochaiah : 3. Smt.B.Papamma W/o.Narsimhulu

Respondent No.2 challenged the grant of ORC to the appellants by filing an appeal under Section 24 (1) of the 1955 Act. During the pendency of the appeal, the Joint Collector directed Mandal Revenue Officer, Malkajgiri Mandal to make enquiry and submit report regarding the status of the land. The latter reported that land in Survey Nos.403 and 404 (except 0.10 gts.) is covered by houses and plots. After considering the same, the Joint Collector passed order dated 7.2.2006 (Ex.P.3) whereby he declared the grant of ORC in respect of Survey Nos.403 and 404 measuring Ac.1-15 gts. as void. The Joint Collector noticed the plea of the appellants herein that the Mandal Revenue Officer had mutated the land in their favour; that they sold the land to M. Ravinder and M. Venkat Ram Reddy vide sale deed No.2418/2003 and handed over possession to the vendees and that the appeal of respondent No.2 was highly belated and held that ORC could not have been granted to the appellants. The relevant portions of that order are extracted below:

"As per Pahani of the year 1973-74

Survey Nos.	**Extent**	**Classification**	**Name of the pattedar**	**Name of the possessor**
403	2-12	Pan Maktha	Khaja Imamuddin	Bingi Narsimulu Muthyala Ramchander
404	1-03	Pan Maktha	Khaja Imamuddin	Bingi Narsimulu Muthyala Ramchander

Perused report of Mandal Revenue Officer, Malkajgiri Mandal which

says that the land in Survey Nos.403 & 404 admeasuring Acs.2-12 & 1-03 gts. respectively (except 0-10 gts. vacant land in Sy.No.404), Alwal Village, Malkajgiri Mandal covered by houses and plots.

Section 9 of A.P. (T.A.) Abolition of Inams Act, 1955 by implication, prescribes the issuance of Occupancy Rights Certificate in respect of non-agricultural lands.

Amplifying the scope of Section 9, the Hon'ble High Court of A.P. in A.P. Panjabi Sabha, Hyderabad v. Joint Collector, Hyderabad District 2004 (5) ALD 644 has held under:

"The term 'agricultural or non-agricultural purposes' is not defined under the Act. However, for the purpose of Section 9, it is sufficient if the land is put to non-agricultural purposes. The reason or justification is outside the scope of enquiry under the provisions of the Act. The Collector will assume jurisdiction to decide the claims under Section 10 only, if the lands were put to agricultural use. Though in Form I, the relevant date is mentioned as 20. 7. 1955, in view of subsequent legislative changes and judicial pronouncements, the crucial date now stands as 1. 11. 1973. In Sections 4 and 5, the expression 'cultivates personally' is used, whereas in Sections 6, 7 and 8, the expression 'under his personal cultivation' is employed. They constitute the jurisdictional facts, for exercise of power under Section 10. An inamdar, Kazim-e-kadim or tenant may have an excellent ground or justification, for not undertaking activities of cultivation in the inam lands. But once such land is found to be not under cultivation, the Collector ceases to have power to deal with the same under Section 10. Further, the contesting respondents clearly stated that the land is put to non-agricultural purposes.

In its wisdom, the Legislature mandated that the adjudication of the claims in relation to the buildings and non-agricultural inam lands, be, undertaken by a specialized forum, and not by the Collector. That being the case, it was not open to the second respondent, to have entertained the application submitted by the contesting respondents under Section 4 of the Act.

Thus, it is clear that grant of Occupancy Rights Certificate under Section 4 is not permissible in respect of lands covered by structures.

In the instant case, the Revenue Divisional Officer, Chavella Division by the impugned order has granted Occupancy Rights Certificate in respect of lands covered by structures. The same is without jurisdiction and is therefore ab initio void."

The appellants also challenged ORC granted to respondent No.2, but their appeal was dismissed by the Joint Collector vide his order dated 13.6.2006 (Ex.P.10).

The appellants unsuccessfully challenged order dated 7.2.2006 inasmuch as Writ Petition No.16653 of 2006 filed by them was dismissed by the learned Single Judge by relying on an earlier judgment in **A.P. Punjabi Sabha, Hyderabad v. Joint Collector, Hyderabad District**[1]. The learned Single Judge observed that once the subject lands had been put to non-agricultural use, the Inams Tribunal did not have the power to deal with the same under Section 10 of the 1955 Act and the ORC granted to the appellants was void. The learned Single Judge also took cognizance of the plea of the appellants that the ORC issued in favour of respondent No.2 has not been cancelled and observed:

> "The second respondent filed appeal against the grant of ORC to the petitioners, which was disposed of observing that the RDO has no jurisdiction to issue ORC in respect of non-agricultural lands used for the buildings. This order was passed on 07.02.2006. The petitioners 1 to 3 also filed appeal before first respondent being case No.F1/2288/2006, feeling aggrieved by the grant of ORC to second respondent. In the other appeal, first respondent obtained report from Mandal Revenue Officer, who reported that except an extent of Acs.0.10 guntas, the entire land in survey Nos.403 and 404 is covered by houses and house site plots. The first respondent referred to the earlier order in the appeal filed by second respondent and dismissed the appeal filed by the petitioners observing that the issue raised in the appeal filed by the petitioners is already decided in the earlier appeal of the second respondent. This only means that the first respondent declared the ORC issued by the Inams Tribunal, RDO, Chevella, in respect of the land comprised in survey Nos.403 and 404 as void for the reasons noticed hereinabove. There cannot be any doubt that Mandal Revenue Officer would keep in mind the observations made by first respondent while dealing with the matter in case such necessity arises."

Shri A. Ravinder Reddy, learned counsel for the appellants argued that while deciding the appeal preferred by respondent No.2 under Section 24 of the 1955 Act, the Joint Collector did not have the power, jurisdiction or authority to direct the Mandal Revenue Officer to submit report regarding the physical status of the subject lands and such report could not have been relied for nullifying the ORC granted to his clients because copy thereof had not been made available to

them and they were not given opportunity to controvert the same. He further argued that if the ORC granted to the appellants could be cancelled on the ground that the subject lands had been used for non-agricultural purpose, the ORC granted to respondent No.2 could not have been sustained.

In the context of the first argument made by him, we repeatedly asked the learned counsel to show whether the appellants had objected to the consideration of the report of the Mandal Revenue Officer by the Joint Collector and whether they had applied for a copy thereof and also prayed for grant of opportunity to controvert the same. We also enquired from the learned counsel whether the plea of denial of opportunity to controvert the report of the Mandal Revenue Officer was raised and argued before the learned Single Judge and whether any evidence has been produced on the record of this case to controvert the fact that houses have been constructed over the subject lands. To none of these questions, the learned counsel could give any reply though he reiterated that if the ORCs of his clients were cancelled, there can be no justification to allow respondent No.2 to take benefit of the ORC granted pursuant to order dated 19.10.2002.

Since the appellants are not shown to have made an application to the Joint Collector for supply of copy of the report prepared by the Mandal Revenue Officer and they did not object to the consideration thereof, the order impugned in this appeal and the one which was subject matter of challenge in the writ petition cannot be set aside/quashed on the ground of violation of the rules of natural justice. Here, it is also apposite to mention that even in the grounds of appeal, the appellants have not made a grievance that they had raised the plea of violation of the rules of natural justice on account of the consideration of the report submitted by the Mandal Revenue Officer without supplying copy thereof to them and the same has not been considered by the learned Single Judge.

The argument of the learned counsel that the Joint Collector

could not have called for the report of the Mandal Revenue Officer and relied on the same is being mentioned by us only to be rejected. It is settled law that the power of the appellate authority is co-extensive with that of the original authority. Section 24 of the 1955 Act does not contain any restriction on the power of the appellate authority. Therefore, in his capacity as the appellate authority, the Joint Collector could have made appropriate enquiry for determination of the status of the land and no exception can be taken to the direction given by him to the Mandal Revenue Officer to submit status report regarding the subject lands.

The second contention of the learned counsel merits rejection because, in the writ petition filed by them, the appellants neither challenged order dated 13.6.2006 passed by the Joint Collector in the appeal preferred by them against the grant of ORC to respondent No.2 nor they made a prayer for quashing the same. In our considered view, in the absence of specific challenge to order dated 13.6.2006, the learned Single Judge could not have nullified the ORC granted to respondent No.2.

There is another reason for our disinclination to interfere with the order of the learned Single Judge or to nullify order dated 7.2.2006 passed by the Joint Collector. In the affidavit/ written arguments filed by them before the Joint Collector, the appellants volunteered to say that they had sold the subject lands to M. Ravinder and M. Venkat Ram Reddy. This is evinced from the following extracts of the order (Ex.P3):

"That the Inam Tribunal has granted Occupancy Rights Certificate in proceeding No.L/1703/02 & G/2732/2000 dated 19.10.2002 in Survey Nos.403 measuring Ac.0.14 gts. and 404 measuring Acs.1.01 gts. totally Ac.1.15 gts. of Alwal Village, Malkajgiri Mandal. The Mandal Revenue Officer, Malkajgiri has granted mutation in proceedings No.B/10604/2002 dated 29.11.2002 in their favour. Further, they have sold the land which got under Occupancy Rights Certificate to M. Ravinder and M. Venkatram Reddy vide sale deed No.2418/2003 and also handed over the peaceful possession to the vendees. The appellant herein after a delay of one year with false and fabricated allegations filed the appeal."

Since the appellants have already sold the land, they do not have the locus to question order dated 7.2.2006 and the learned Single Judge would have been justified in declining to entertain the writ petition only on that ground.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

September 28, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] 2004 (5) ALD 644